July 21, 2014

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Office of Regulatory Affairs & Collaborative Action
U.S. Department of the Interior
1849 C Street NW, MS 4141
Washington, DC 20240
Reverence – Docket ID: BIA 2013-0007, RIN 1076-AF18

Dear Ms. Appel:

As this action applies to the possible future recognition of Indian tribes by the federal government and does not affect the status of currently federally recognized Indian tribes, I would like to thank you and the Department of the Interior on behalf of the State of Alabama's Indian Affairs Commission and its eight state recognized Indian tribes who may be affected by this process in the future. I understand that nothing you produce will make everyone happy, but am thankful (As are many other tribal officials) that this Administration has decided to take a deficient process and make it better[12]. I will attempt to provide constructive comments for each part of the proposed document in an attempt address the issues from the perspective of this office and the inputs of the many indigenous people we represent in Alabama.

§ 83.1 What terms are used in this part?

Informed party is currently defined in this section as "any person or organization who submits comments or evidence or requests to be kept informed of general actions regarding a specific petitioner." Based on this definition, the only criteria to be an "Informed" party is to be

[1] Letter from the Chairman of the Mashpee Wampanoag Tribe to the DoI concerning this initiative dated July 31, 2013.
[2] Letter from the Chairwoman of the Tejon Indian Tribe to the DoI concerning this initiative dated August 12, 2013.

a person who submits information, regardless of education level, level of expertise, political or social agenda, or malice toward a petitioner. This office requests that consideration be given to the establishment of a vetting process and to establish criteria that better defines who can be an "Informed" party vs. simply an interested party. We support the documented desire of the recently recognized Tejon Indian Tribe, who have successfully overcome the objections of "interested parties" as they call for the complete "elimination of criteria requiring evidence from outside observers of the petitioning community's continuing existence[3]". According to a State Department news release, President Obama announced that the United States and this administration supports United Nations Declaration (Declaration) on the Rights of Indigenous Peoples[4] and that in the eyes of the administration, the declaration has both moral and political force. "U.S. support for the Declaration goes hand in hand with the U.S. commitment to address the consequences of a history in which, as President Obama recognized, ―few have been more marginalized and ignored by Washington for as long as Native Americans—our First Americans"[5]. This office wishes to point out that "Informed" third parties should first demonstrate that they are in fact, informed on the history of the applying entity, its regional history, and the laws and circumstances of marginalization surrounding the entity to be an "Informed Party". It is important to note that the histories of the indigenous peoples of the Southeastern United States is greatly different from that of any other region of this great nation from the conclusion of administration of Andrew Jackson through the end of what is recognized as the Civil Rights Era. Parties who have in the past demonstrated a propensity to be racist or to discriminate should be excluded from participation as a third party to conform with the administrations professed willingness to support the U.N. Declaration as they violate the

[3] Letter from the Chairwoman of the Tejon Indian Tribe to the DoI concerning this initiative dated August 12, 2013.
[4] http://www.state.gov/s/tribalconsultation/declaration/
[5] Ibid

reaffirmation "that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind"[6] Article 2 of the Declaration is specifically dedicated to the protection against discrimination by stating "Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.[7] Alabama is considered by many as the cradle of the civil rights movement, and this office is extremely pleased at this declaration by the President as it finally recognizes what is not covered in the text books[8].

§ 83.2(c) & (d) attempts to create a uniform standard for all Indian tribes recognized by the Federal Government with statements like "Means the tribe has the responsibilities, powers, limitations, and obligations of other federally recognized Indian tribes; and"… "Subjects the Indian tribe to the same authority of Congress and the United States as other federally recognized Indian tribes." This statement is not in conformance with the text present in the remaining documentation establishing a special set of criteria for federal recognition that is not retroactive, applicable, or in some cases even attainable for other current federally recognized Indian tribes. Many currently recognized tribes cannot meet some of the stated criteria in this document and thus establishes at least two (at a minimum) classes of Indian in this country. **§ 83.3 "**This part does not apply to Indian or Alaska Native tribes, bands, pueblos, villages, or communities that are federally recognized." If one of the intents is to establish a uniform standard for what an Indian tribe is so that you can assemble proof that you are an Indian tribe, why do these clauses

[6] United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007
[7] Ibid (P.2)
[8] http://www.state.gov/s/tribalconsultation/declaration/

exist? I will submit to you that any standard that cannot be met by a current federally recognized Indian tribe should be stricken to ensure the concept of due process and equal protection under the law is not perceived as being violated. Issues of unequal treatment permeate Indian country even today and the lack of equal treatment under the law should be considered whenever a policy is modified or created by the government. As stated by the Chairman of the Cowlitz Indian Tribe, this inequality is not simply one that exists in the separate treatment of federally recognized tribes and other tribes, but one that exists between landless tribes (federally recognized or not) and tribes who have reservations[9]. The fact that many tribes are landless creates even more difficulties in meeting some of the criterion listed in the proposed updates as, in my opinion, clearly favor the circumstances that exist for tribes with reservations.

§ 83.4(a)(1) states that "The Department will not acknowledge an association, organization, corporation, or entity of any character formed in recent times, unless the entity has only changed form by recently incorporating or otherwise formalizing its existing politically autonomous community. The term "Recently" needs to be defined for petitioners who have chosen to change form recently. There is also a "Catch 22" built into this statement. We appear to want tribes who are currently not federally recognized to produce documents showing that they are functioning as a "Distinct Community" as specified in § 83.11(b). This restriction punishes those tribes who have chosen to use existing legal and acceptable methods of identifying themselves as "Distinct" by requiring an additional burden of proof not present for other tribes as well as opening avenues of attack for entities that wish to contest a tribe's petition. This also contradicts the intent of §83.11(b)(1)(iv) which states that "Shared or cooperative labor or other

[9] Letter from the Chairman of the Cowlitz Indian Tribe to the DoI concerning this initiative dated September 25, 2013.

economic activity among members" is desirable. A business incorporates to attain legal protections and establish themselves as distinctly different from like businesses. A town (Local Government) incorporates to demonstrate it is distinct and separate from nonmembers and adjacent towns, governments, and territories. I submit to you that any and every step taken by a tribe to establish they are a distinct community should be favorably viewed, particularly if the "Corporation" is owned by all of the tribes citizenry and it is controlled by the tribes governing body or a body established by the governing body as well as demonstrating the stated desired activity described in §83.11(b)(1)(iv). Finally, this provision appears to conflict with the administrations stated support of the rights of indigenous peoples as outlined by the U.N. The U.N. recognizes in its declaration that the situation of indigenous peoples varies from **region to region** and that various historical and cultural backgrounds **should be taken into consideration** when dealing with indigenous groups[10]. Article 3 states that indigenous peoples have the right to self-determination and by virtue of that right they freely determine their political status and **freely pursue their economic**, **social and cultural development**[11]. This provision appears to violates article 3 as it prohibits and/or punishes tribes because they chose to exercise self-determination and freely pursue their economic, social and cultural development **in compliance** with existing federal, state, and local laws (Unlike currently federally recognized tribes, petitioning tribes MUST comply with all federal, state, and local laws). In some regions, without federal recognition, the only means to establish legal legitimacy as a distinct element is by acting in such a manner. Many recently recognized tribes have written about the struggles[12] they had existing without federal recognition prior to and while going through the process as state and

[10] United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007 (P.4)
[11] Ibid
[12] Letter from the Chairwoman of the Tejon Indian Tribe to the DoI concerning this initiative dated August 12, 2013.

local laws created environments hostile to the ability to satisfy this requirement[13]. This provision also contradicts Article 5 of the U.N. Declaration which states that "indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State".[14] This office understands why some organizations, particularly Tribes that are already federally recognized, would wish to see this provision remain intact, but the provision appears to me to violate the rights of the petitioner as stated in the articles, and contradicts President Obama's stated desire that the U.S. and his administration support the U.N. Declaration to the best of their abilities[15]. Again, this office recommends this provision be stricken from the recognition criteria for the above stated reasons.

§ 83.4(a)(2) states that "A splinter group, political faction, community, or entity of any character that separates from the main body of a currently federally recognized Indian tribe". This definition needs to be expanded to include a statement that members of the so called "Splinter group" are eligible for membership in the federally recognized Indian tribe in question. Arguments can be made that a group is a splinter group based on common ancestry, yet it is impossible to splinter from a group from which you are not eligible to be a member. This can be common among tribes that hold to matrilineal decent as descendants of the male are not eligible for citizenship. Additionally, this document recognizes that political descent occurs within tribes and in some cases; citizens who appeared on the rolls of a federally recognized tribe were expelled from the tribe. These people should not be considered a splinter group should they be

[13] Letter from the Chairman of the Mashpee Wampanoag Tribe to the DoI concerning this initiative dated July 31, 2013.
[14] United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007 (P.5)
[15] United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007

able to meet other criteria. There are also cases such as the situation of the Cherokee Freedmen. After many became citizens of the Cherokee Nation in accordance with a treaty made with the United States government a year after the Civil War ended, descendants of the original Cherokee Freedmen were born into the tribe as Cherokee Citizens. In the early 1980s, the Cherokee Nation administration amended citizenship rules to require direct descent from an ancestor listed as "Cherokee by Blood" on the Dawes Rolls. The change stripped descendants of the Cherokee Freedmen of citizenship and voting rights unless they satisfied this new criterion. About 25,000 Freedmen were excluded from the tribe. Several generations of citizens who had no need to keep genealogical data found themselves in need of such documentation. History shows that Indians mixed blood freely and regularly, but documentation was never a large issue until recognition and the civil rights era caused people to start searching for data that had long been suppressed. These people should not be considered part of a splinter group should they choose to make application. Additionally, most of the criteria outlined in this document is heavily dependent on written documentation from "Historic" times and fails to recognize the literally thousands of documented cases where mass quantities of records have been destroyed intentionally, by accident, and/or by natural causes. As stated above, President Obama announced that the United States and this administration support's United Nations Declaration on the Rights of Indigenous Peoples which not only addresses the right to adapt, but specifically refers to scientific advancements. That document refers to U.N. Resolution 2200a (XXI), which states in Article 15 that EVERYONE has the right to enjoy the benefits of scientific progress and its applications[16][17]. Other scientific methods of determining existence and relations, particularly that of distinct groups should be taken into account specifically. Although there are numerous

[16] United Nations Declaration on the Rights of Indigenous Peoples

[17] International Covenant on Economic, Social and Cultural Rights, resolution 2200A (XXI), Adopted by the UN on 16 December 1966, entry into force 3 January 1976, in accordance with article 27

scientific avenues, one which is noticeably ignored is the presence of American Indian markers in DNA, as well as ongoing American Indian DNA collection programs. Somewhere along the line we are going to need to recognize the value of new research and developments in science in an effort to fill in the gaps created by the volumes of information lost as a result of paper and ink media being extremely sensitive to destructive forces, and the numerous documented incidents where information was lost due to this problem.

§ 83.4(b)(1)(i) states that "Any third parties" that participated as a party in an administrative reconsideration or Federal Court appeal concerning the petitioner has consented in writing to the re-petitioning" as a condition for re-petitioning for recognition. Based on the previous process requirements for participation, as well as the definition in this document that "any person or organization who submits comments or evidence or requests to be kept informed of general actions regarding a specific petitioner", anyone who sent in anything at all can be considered a third party. The only criteria is to be a person who submits information, regardless of education level, level of expertise, political or social agenda, or malice toward a petitioner. As written, a single individual with malice toward the tribe, the religious conviction that Indians are heathens, people who fear gambling and/or are ignorant of current law, and so many other reasons can prevent reconsideration by simply withholding written consent. This will allow one person previously involved to hold hostage the citizens of an entire tribe without recourse. This stipulation should be struck from the final document. This office recommends that any third party found to have submitted false information against a petitioner be permanently banned from the process for this petition and any future petitions, as well as being excluded from this provision should it not be stricken. A petitioner has recourse against non-governmental third

parties where slander and defamation of character is presented officially and found to be false. The petitioner does not have the same recourse should a federally recognized tribe or other governmental agency provide false information, so this punitive measure should act as a deterrent.

§ 83.6 What are the Department's duties? One of the Department's duties should be to determine the validity of participation of all parties not listed as agents of the petitioner or the Department. This process is for the determination of recognition of a party (Tribe) by another party (Federal Government). I find it alarming that third parties are allowed influence in the process without vetting. The burden of proof is on the petitioner to prove they are a tribe, and that proof is to be validated by the Department; I don't see why third parties are allowed in the process at all, particularly without vetting. § 83.10(a) states that "the Department will consider a criterion to be met if the available evidence establishes a reasonable likelihood that the facts claimed by the petitioner are valid and that the facts demonstrate that the petitioner meets the criterion." I do not see a roll for a third party in this mission statement, much less an un-vetted third party. There are no requirements of or activities for third parties listed in § 83.10(b)(1) through (7). In all cases defined in this document so far, the evidence is provided by the petitioner, the petitioner's evidence is evaluated by the Department. There is a distinct lack of guidance and procedure defined for what may be submitted by a third party and how that data will be processed by the petitioner and/or the Department. At a minimum, the Department should allow the petitioner access to any third party submissions and the ability to address any issues, concerns, or data pertaining to the submission before (Before) that third party information is presented to the government personnel with

decision making authority on the petition. The petitioner should also be afforded the opportunity to provide evidence that the third party in question is or has a history of discriminating against the petitioner and/or supporting, advocating, or implementing violations of the rights of the petitioner as indigenous peoples.

§ 83.11(b) discusses Community and requires "The petitioner must now constitute a distinct community and must demonstrate that it existed as a distinct community from 1934 until the present without substantial interruption." This office has objected to this date of 1934 many times and at many venues as it fails to recognize the unique history of the Southeast. Anyone who has heard about the Civil War, Reconstruction, KKK, Dr. Martin Luther King Jr., or the march from Selma Alabama cannot deny this fact. Although we do not believe the basic history books used in schools is an accurate depiction of this nation's history as it pertains to her indigenous people, we believe the following is substantiated by those same history books approved by the Department of Education. The date of 1934 **FAILS** to account for the almost unique situation faced by the Southeastern tribes whose history needs to be taken into consideration here. The Southeastern coastal areas were all but depopulated by early settlers and shipped off as slaves to the Caribbean and Northeast colonies. Natives from smaller Tribes did their best to blend or flee to areas not under pressure. Later, between 1828 and 1829, governments located in Alabama, Georgia, and Mississippi passed legislation asserting that state civil and criminal laws applied to the Indians, assuming that the Indians would rather remove than submit. In addition to piecemeal legislation between those years, lawmakers exercising power in what is now Alabama passed a broader extension bill in 1832 that brought the Indians further under Alabama law. These laws were designed to usurp Indian governments and prohibit

them from violating Alabama's laws[18]. This, amongst many other reasons, is why it is so difficult for Southeastern Tribes to get recognition under the current rules. Although these criteria will be national in nature, you cannot remove the negative influences of local, regional, colonial, and State law on the history and ability of tribes to satisfy the new requirements for recognition[19]. In the southern United States the American Indians, Afro-Americans, homosexuals Jewish people and other non-whites dealt with the following issues: Jim Crowe's laws, Ku-Klux Klan, and segregation laws (Pick any history book approved by the Department of Education or State agencies, and you will find these facts). States actively altered records as did Indian families, many out of fear of discrimination and deportation[20]. Virginia's Racial Integrity Act of 1924 is but one example of a law that intentionally resulted in genealogical records being destroyed during the first half of the twentieth century. There is no way of knowing how many family records were destroyed or falsified to protect the identity of oppressed Indians in Alabama and the Southeast. Even today, Alabama has recently adjusted its laws so that **no document produced by the state** whether historical or recent, could identify race. Indian children born in Alabama from 1991 to present will not have Indian, American Indian, or Native American listed on their birth certificates and the race of the parents has not been on the birth certificate form since 1991 as well[2122]. Georgia does not place race on birth certificates as well, and any requests to replace old lost or damaged certificates in that state will not include race even if the original did. Adults in Alabama are no longer able to have race listed on our driver's licenses, voter registration cards, or any form of official identification produced by the state. Should an

[18] Littlefield, D. F. (2011). Encyclopedia of American Indian removal. Santa Barbara, Calif.: Greenwood

[19] Letter from the Chairman of the Mashpee Wampanoag Tribe to the DoI concerning this initiative dated July 31, 2013.

[20] Littlefield, D. F. (2011). Encyclopedia of American Indian removal. Santa Barbara, Calif.: Greenwood

[21] Rules of Alabama State Board of Health, Alabama Department of Public Health, Chapter 420-7-1, Vital Statistics Revised: February 2014, P. 24

[22] Code of Alabama, §22-9A-12,

amended birth certificate from prior to 1991 be required, it will be prepared on the current form to no longer show race on the amended birth certificate[23]. I understand the thought process behind pinning this date based on 1945 Handbook of Federal Indian Law *(by* Felix *S.* Cohen), but I disagree with it for historic reasons. Cohen appears to be viewed by the department as the single most expert on Indian Law, but his book was researched and compiled prior to its publication in 1945. America and particularly the South was sill segregated in 1945 and this was viewed as acceptable. The military desegregated in 1948, schools in the South were not desegregated until the late 1950's, the Civil Rights movement is often depicted as occurring from the mid 1950's to late 1960's. Before these events, if you were not "White" in the Southeast, you suffered from personal and legal discrimination and a physical threat that was all too well highlighted during the civil rights movement in the South[24]. All of these landmark events which would allow for the encouragement of identification as a member of a non-white group occurred well after 1935 and after Mr. Cohen's 1945 Handbook. Local and regional history must be taken into account to be fair, particularly for tribes in the Southeast. Additionally, the provisions most recently announced as supported by this administration in the United Nations Declaration on the Rights of Indigenous Peoples, which passed on 13 September 2007, as well as its specified reference of the International Covenant on Economic, Social and Cultural Rights, resolution 2200A (XXI), adopted by the UN on 16 December 1966, entry into force 3 January 1976 are also **not** taken into account by Cohen and his manual. Wording allowing for this to be taken into account should be inserted when reference to 1934 is made if the intent is to produce a set of procedures that provides equal protection and equal opportunity to all petitioners, not just the ones who exist outside of the Southeastern United States.

[23] Rules of Alabama State Board of Health, Alabama Department of Public Health, Chapter 420-7-1, Vital Statistics Revised: February 2014, P. 24

[24] Littlefield, D. F. (2011). Encyclopedia of American Indian removal. Santa Barbara, Calif.: Greenwood

§83.11(b)(1)(v) states that "Strong patterns of discrimination or other social distinctions by non-members" can be used as a criteria for the establishment of community. I will submit to you that these exact criteria should be applied to allow for the exception of the milestone date of 1934 listed above, particularly for Southeastern tribes making petition.

§83.11(b)(1)(x) requires "A demonstration of political influence under the criterion in §83.11(c)(1), which is a form of evidence for demonstrating distinct community for that same time period". The time period being referenced is 1934. Again, this office protests the use of that date without an exception clause for tribes who suffered oppressive social and/or legal environments post 1934 that would prevent or hinder their ability to provide documentation of this activity during specific post 1934 timeframes. The University of Houston, in its publication "Digital History" states that "During the late 1960s and early 1970s, a new spirit of political militancy arose among the first Americans, just as it had among black Americans and women. No other group, however, faced problems more severe than Native Americans."[25] Although we recognize that Northeastern tribes had to survive through invisibility and disguise[26], this time reference can be applied to a great extent to Southeastern Indians and Black Americans as the struggles during these times and before were worse than those in the other major regions of the nation. Additionally, this particular criterion may not be one that current federally recognized tribes can meet themselves. In a recent lawsuit filed by the Cherokee Nation (CN), Cherokee Attorney General Tom Hembree cited a 1930's Interior ruling that denies the United Keetoowah Band of Cherokee Indians (UKB) was a separate tribe because it was "neither historically nor

[25] http://www.digitalhistory.uh.edu/disp_textbook.cfm?smtID=2&psid=3348
[26] Letter from the Chairman of the Mashpee Wampanoag Tribe to the DoI concerning this initiative dated July 31, 2013.

actually a governing unit of the Cherokee Nation, but a society of citizens within the Nation with common beliefs and aspirations[27]." Again, this office recommends that any criteria that establishes a double standard should be stricken from any federal documents, this one included. This office also supports President Obama's wish that the U.S. and his administration support the U.N.'s Declaration on the Rights of Indigenous Peoples by pointing out that this provision conflicts with Articles 2, 3, 4, 8, 9, 11, 13 20, 23, and 33[28]. By specifying 1934, the Department is dictating conformance to a specific point in time. By specifying that a petitioner "demonstrate a political influence", it is actually requiring written documentation and conformance to specified criterion in §83.11(c)(1). Many Southeastern Woodlands tribes have a tradition of decentralized government, and none, save the Cherokee of the removal era, had a written language. The culture was one of oral tradition. By requiring the demonstration of political influence in 1934, you are requiring a written set of proof which is contrary to many tribal traditions as well as requiring the petitioner to conform to standards that are not or may not be how they practice their cultural government, culture or traditions (Contradicts Article 2 & 3). We understand that tribes have the right to evolve and change as do any other people, but if a traditionalist tribe did not conform to the non-traditional practice of documenting tribal activities in a manner conducive to methods accepted by European cultures until after 1934, they are being penalized. Article 11 specified that indigenous peoples have the right to practice and revitalize their cultural traditions and customs, so there is no conflict for the Tribes that conformed to modern documentation standards, but again, this criteria discriminates against those who chose to remain true to their historic indigenous culture of oral tradition and decentralized government by imposing modern standards to a historic model. For further evidence of the ability to exist

[27] http://indiancountrytodaymedianetwork.com/2012/09/05/cherokee-nation-sues-interior-united-keetoowah-bands-two-acre-trust-land-132815

[28] United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007

continuously without writing things down, one need only look to South America or Africa where tribes have existed since before the formation of the United States who to this day still do not write things down. An additional burden arises in that until very recently, written records were kept almost exclusively on paper. There are literally thousands of instances where fires and floods have eliminated records kept in a specified location, erasing all traces of that documentation. Following WWII, there was a fire in St. Louis that destroyed the service records of thousands of veterans, and in the early 1980, the Tonawanda Seneca tribal office burned and volumes of tribal and genealogical records were lost. The Mashpee Wampanoag refer to having to spend large amounts of time and money, going to foreign countries to attain records lost or destroyed to attain there recognition in 2007[29]. Libraries, Offices of Vital Statistics, tribal offices of current federally recognized tribes, and many others have had similar disasters, many occurring after 1934[30]. Even in this day and age computers crash and media gets corrupted as is evidenced by the issues being faced by the IRS. Documents that do exist may have names other than those currently being used today and will be contested, primarily by third parties, which does not take into account the provisions of Article 13 of the UN declaration which protects the rights of indigenous people to designate their own names for communities, places, and persons. In many cases, names were not changed intentionally. For proof of this, ask any genealogist how many cases they have come across where names have been written incorrectly by census workers, surveyors, immigration officials, roll takers and so on, or were changed when documents were being transcribed or re-printed. Indigenous peoples have the right to maintain and develop their political, economic, and social systems or institutions (Article 20). There is no provision that states that indigenous peoples have to seek consent or permission from a sovereign

[29] Letter from the Chairman of the Mashpee Wampanoag Tribe to the DoI concerning this initiative dated July 31, 2013.
[30] Ibid

government they do not recognize as their own. On the contrary, this is designed to protect them from the influences of a sovereign government that would dictate restrictions designed to make the people more like those of that government. We do not see this as a particular issue between the tribes in Alabama as there is no great influence of this nature exerted by Alabama, but rather, the undue influences that the sovereign governments of recognized tribes outside of Alabama constantly try and exert over Alabama's indigenous peoples. Again, this appears to be contrary to the right of tribes to maintain the oral traditions of their culture or modify them as they freely choose to do vs. being forced to conform to standards imposed on them by other "Interested Parties". Those who chose to maintain this tradition will not be able to provide the reams of written evidence that appear to be required and that "Interested Parties" have demanded in the past. Article 23 states that indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development of a government, social structure, and economic structures to name a few. Tribes that currently have federal recognition have been doing this for years as stated above. Some tribes have completely re-written their governing documents in a manner that does not reflect their heritage and history, but conform to modern European governance practices[31]. These rights are protected and this office has no issues with any Tribe that exercises these rights, but we need to ensure we don't discriminate against those Tribes that have chosen to maintain the oral traditions of their ancestors. We also need to recognize that these rights do not constitute an "All or Nothing" transformation as some tribes may choose to remain traditional in cultural aspects but be very modern in economic or other aspects of existing in modern times. Finally, if this process is to support the Presidents stated goal of his administration supporting this U.N. position, then we need to look at the provisions of

[31] Constitution of the Cherokee Nation, enacted the 26th day of June, 1976

Article 23 in the analysis stages of the petition process[32]. As indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development of a government, there is now a requirement by the petitioner to define those policies and procedures that were developed. Without this definition, the Department will be unable to protect that right and analyze the data submitted to prove governance against the governmental system that applies to the petitioner. When the President pronounced his administration's support for this U.N. enumeration of rights, he recognized that there are variations in the forms of government of America's indigenous people and those governments could evolve over time[33]. Chairman Cedrick Cromwell did an outstanding job in highlighting the validity of the various forms of indigenous governments in America by asking "Why is tribal identity dependent on the lable used by outsiders – and why is the recorded data of (outsiders) more important and more valuable than tribal learning and tradition?"[34] CN changed their constitution sometime in the 1980's I believe, and any evaluation of the influences of their government must be done against the powers, authorities, and practices outlined in that modern constitution, not the governing documents of the late 1800's or early 1900's. The same should hold true for petitioners and their own governments, tribal learning and traditions, not that of outsiders.

§83.11(b)(2)(i), establishes a requirement that "More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the entity, and the balance of the entity maintains consistent interaction with some members residing in that area". Recently recognized tribes have in the past and in several forums expressed objections to

[32] United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007
[33] United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007
[34] Letter from the Chairman of the Mashpee Wampanoag Tribe to the DoI concerning this initiative dated July 31, 2013.

percentages being used as criteria that does not reflect weather a community is distinct or maintains distinct cultural patterns[35], as well as being criteria that many federally recognized tribes cannot currently satisfy. This office has several concerns with this criterion. First and foremost, the term "Geographical area" is not defined. Who determines that an area is too small or too large? Second, many tribes who are currently federally recognized cannot meet this requirement. As an example and according to the Tribe's own website, the Cherokee Nation (CN) today is the largest Indian tribe in the United States "with well over 300,000 tribal citizens. Over 70,000 Cherokee reside within a 7,000 square mile geographical area…encompassing eight entire counties along with portions of six others, which is not a reservation but rather a federally-recognized, truly sovereign nation covering most of northeast Oklahoma." Based on this self-declaration, they can attest to the fact that they have 23% (Not 50%) of their population in a geographic area and would be unable to meet this standard[36]. This office would not have an issue with a uniform standard applied equally to all tribes and recommends that the geographic area be determined to be the smallest geographic area required so that all current federally recognized tribes meet the criteria of 50% of its population residing in that area. Assuming that the CN, as the largest tribe, is the most spread out, and using a hypothetical number of 40 noncontiguous counties are required to account for 50% of its population, the formula for recognition with geography defined would be "More than 50% of the members reside in a 40 noncontiguous county area". Third, I believe that Indians serve this nation in higher percentages than any other race per-capita, many who do not serve are married to Service Members and Veterans. Active service members are more often than not, not residing in a geographical area near the tribe. Veterans who do not belong to a federally recognized tribe are not eligible to be

[35] Letter from the Tribal Chief of the Jena Band of Choctaw Indians to the DoI concerning this initiative dated August 16, 2013.
[36] http://www.cherokee.org/AboutTheNation/History/Facts/OurHistory.aspx

serviced at Indian Healthcare sites and choose to reside where VA medical facilities are readily available, many choose to live near military bases where other services can be attained (I am one such disabled combat Vet). Indians are very family oriented so immediate and extended family members who choose to live near the Service Member or Vet will also fail to meet this criteria. Forth, this criteria clearly segregates reservation Indians from those who do not reside on federal lands. For a tribe to meet this criterion, it must maintain control of large amounts of contiguous property. To do this outside of the federal reservation system, one must have the funds to purchase, maintain, and pay taxes on this land. If I am not mistaken, it is currently against Federal law and many State laws to deny housing based on race. Without the benefit of the possession of a federal reservation and federal protection against enforcing state and local equal housing laws, a tribe could not meet the requirement that 50% reside in a geographical area "exclusively or almost exclusively composed of members of the entity" without breaking the law. This is particularly true in the Southeast where segregation has for years been aggressively addressed by local and state laws. Only on federal Indian and Military reservations in the South can you accomplish this task, and for an entity to be Indian there is a racial component to being a part of that entity/tribe. This office strongly advises the phrase "exclusively or almost exclusively composed of members of the entity" be stricken as it may violate local, state, and even federal law to accomplish this criterion. Additionally, throughout the 1960s, American Indians were the nation's poorest minority group, more deprived than any other group, according to virtually every socioeconomic measure[37]. In 1970, the Indian unemployment rate was 10 times the national average, and 40 percent of the American Indian population lived below the poverty line[38]. Without adequate funds and education, land was lost more often than one would expect.

[37] Ibid
[38] Ibid

Without employment, heads of Indian households would move in order to find a way to provide food for their families. This is not just an Indian characteristic. Records maintained by the University of California, as well as many other universities, show that in the early 1930s, thousands of "depression refugees" packed up their families and migrated west, hoping to find work. Entire families migrated together (such as the men shown in "Three generations of Texans now Drought Refugees") in search of a better life[39]. Entire Indian families in Alabama moved geographically to where there was employment, more often than not, outside of the geography the tribe may have maintained earlier. One of our tribes maintains ties with groups of its members that migrated to California and Texas and maintain local organization and tribal affiliation with the Alabama tribe, but reside in those western states. Another example of this type of mass migration by tight-nit groups is the mid twentieth-century "Great Black Migration" northward out of the poverty of sharecropping and low-wage labor in the South. The example of this phenomenon where heads of household uprooted from their lands and moved so they could provide for their families is not one only faced by a single race, but applied to all races equally[40]. These issues were not faced in great numbers by federally recognized tribes who lived on federal reservations as they received support to some degree from the federal government, in some cases, it was illegal for them to leave the reservations even if they wanted to. They did not have to worry about losing their land due to indebtedness and back taxes as did Indians who were not on federal land during hard times. I am not saying life was not harsh on the reservation, but the reservation system resulted in an experience that now favors one class of Indian over another class of Indian as it pertains to this requirement. Finally, this criterion is absolutely un-American. After World War I, when Indians were granted citizenship, they had the freedom to

[39] Calisphere, a service of the UC Libraries, Copyright © 2014 The Regents of The University of California
[40] Molloy, Raven, Christopher L. Smith, and Abigail Wozniak. 2011. "Internal Migration in the United States." Journal of Economic Perspectives, 25(3): 173-96.

move in a way they had not possessed for a long time. Life in the Southeast for non-whites, as described above, was not pleasant and many opted to move. The Great Depression and World War II saw the movement of many Americans, not just Indians, moving from agricultural areas to industrial areas, further diminishing a tribe's ability to meet this standard. In many cases the fact that one moved did not remove them from the tribal roll, the fact that their children were born outside of a single geographic area did not preclude them from being added to the rolls for several generations to the present. After World War II, American citizens experienced an even greater freedom of movement as family vehicles became more prevalent, and sending one's children off to college became more desirable as a goal. These children often moved to where the work was as it pertained to their degrees further diminishing a non-landed, reservation based tribes ability to meet this requirement. Again, current federally recognized tribes are not subject to this requirement and an extreme burden is placed on tribes who do not have federal recognition or reservations to meet this requirement, particularly since geography is not defined.

§83.11(b)(2)(ii) establishes that "at least 50 percent of the known marriages in the entity are between members of the entity" as a criteria. There are several issues this office has with this, one of which is guidance issued by Health and Human Services against inbreeding. Forced inbreeding, if I am not mistaken is recognized by the United Nations as a genocidal tactic. Because inbreeding is a health risk that is common knowledge and has been for some time, non-reservation tribes will have difficulty meeting this requirement. Tribes that interact regularly can identify many tribal members as cousins, but may not discern the difference between a 1st cousin and a 4th cousin, they simply avoid the stigma of dating and marrying a cousin. Because of the numerous bigoted jokes all over the media defaming Southerners for the preceded prevalence of

the practice of marrying their cousins, this is an especially sensitive subject and disincentive to Southerners marrying any relatives no matter how distant the relationship may be. Some tribes that mandate blood quantum as a condition of citizenship are diminishing in size due to an inability to marry outside of the extended family to non-related tribal citizens. Still others have relaxed their blood quantum requirements to avoid tribal extinction. I do not believe that all of the current federally recognized tribes can meet this criterion today. I believe that the number who could not do so would be higher than one might think. In Alabama, according to the 2010 census, Indians represent less than 2% of the state's population, and less than 5% of the population of the student population of any non-Indian high school. No university in the state can boast more than 2% of its student population being Indian. This makes it particularly difficult to meet this requirement as nationally, schools, churches, work, parties and bars represent the locations where over 41% of married couples state they met their spouses[41]. The most common method of spousal introduction is by referral from a friend. Statistically, and I will assume this holds true for all non-reservation Indians, the majority of your schoolmates, workmates, and friends will be from the majority culture in your geography, thus statistically you will marry a non-Indian. Again, this criterion favors reservation Indians and discriminates by codifying not only a separate class of Indian but a quantifiable additional burden that defies the socioeconomic and geographic realities in which many tribes find themselves. As stated before in the 50% geography argument, this office does not believe that the largest federally recognized tribe in the nation would be able to meet this criteria as their website states that over 70% of their enrolled population live outside of the counties where they have a significant population density. If those current federally recognized tribes cannot meet this standard, why would you

[41] Laumann, Edward O., Gagnon, John H., Michael, Robert T., Michaels, Stuart. The Social Organization Of Sexuality: Sexual Practices In The United States (University of Chicago, 1994, ISBN 0-226-46957-3), p. 235.

discriminate against others by enforcing it? Finally, if the administration is going to truly support the President's directive to support the U.N.'s enumeration of the rights of indigenous people[42], you can not impose a system that forbids the application of those rights as a prerequisite for the recognition of the simple existence of a tribe.

§ 83.11(c) Political Influence or Authority. This criterion states that "The petitioner must have maintained political influence or authority from 1934 until the present without substantial interruption." This office has no objection to the requirement of a tribe to have maintained political influence or authority (As defined by the tribe in its exercising of its right to establish and define the rights, responsibilities, and powers of its own government) as long as it pertains to influence or authority over its tribal citizens only. As stated previously, we strongly protest the milestone date of 1934 and the requirement be one of documentation unless included in that documentation is the recording of oral histories from Tribal officials and elders for those Tribes who practiced (and may continue to practice) the cultural tradition of maintaining an oral history to present times or such a time as the Tribe changed its governance practices to one that conformed more to the historically and culturally Eurocentric definition of governments that incorporates written records. Additionally, evidence of occurrences such as fire or flood at repositories where the tribes records were kept should be taken into account when a lack of written evidence is identified, or where there are gaps in written records. Proof of such a destructive occurrence should be all that is required to justify such deficiencies.

§83.11(c)(1)(i) "The entity is able to mobilize significant numbers of members and significant resources from its members for entity purposes." This criteria will be extremely difficult to

[42] United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007

demonstrate until the term "Significant" is defined. 200 mobilized citizens is insignificant to a tribe of 40,000, but very significant to a tribe of 500. $200,000,000.00 may be insignificant to a federally recognized tribe with large gaming establishments, but an impossible number to attain for a tribe with severely limited resources. Keep in mind that American Indians are, to the best of my knowledge, still the poorest race in this nation. There are many criteria established by the Federal Government that defines the term "significant". I believe the Department of Labor defines significant unemployment as somewhere above 8%. I recommend the criteria define significant numbers of members as a percentage and significant resources as a percentage as well because all tribes are not equal in assets and capital. We also need to take into account the performance or the U.S. Government and its abilities in this area. Because this is to determine government-to-government relationship we must take into account the difficulties of accomplishing this task in modern-day America. We have low voter turn-out statistics nationally, less than 3% of the nation serves to defend the nation, so when we determine what is significant we need to ensure we don't require something we cannot, ourselves accomplish as well as not creating a double standard by establishing a criteria federally recognized tribes cannot demonstrate. It is this office's position that any standard established should apply across the board, not just to petitioners, but to those who are currently recognized so as not to create a double standard or violate the President's intent as it pertains to his recent public commitment to support the enumeration by the U.N. of the rights of indigenous peoples. I keep bringing this up because this policy is new and was not in place when the first round of public comments was requested.

§83.11(c)(2)(i)(C) This criterion establishes a requirement for the petitioner to have the ability to "Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms or the enforcement of sanctions to direct or control behavior". Tribes that are not federally recognized must abide by the constitution of the United States, federal law, and the laws of the State they are physically located in. Federal, State, and Local laws all apply to tribes that are not federally recognized and will not have the same protections and rights to exert influence as do federally recognized tribes. We believe the term "Strong" is not well defined and open to interpretation, but must contain a reference to compliance with federal, state, and local law as well as human rights and that what we are attempting to demonstrate does not violate any of those in its fulfillment. Recommend this be addressed.

§83.22(b)(1)(iv) "The opportunity for individuals and organizations to submit comments supporting or opposing the petitioner's request for acknowledgment within 90 days of the date of the website posting" continues to cause this office concern. This is tantamount to inviting any individual or organization who is prejudiced against Indians in general, or has a vested and/or documented interest in preventing the petitioner(s) attaining recognition specifically, to influence the process without vetting. It will also require the Department to review any and all data and research its validity allowing malicious elements to swamp the process with documents that must be addressed by the government. This process should be an action between the petitioner and the Department, and only very specific third parties should be allowed to influence the process. Those parties should be representatives of the Federal Government and the State(s) where the petitioner's government conducts business, all others should be stringently vetted. .

§83.22(b)(3) "Notify any other recognized tribe and any petitioner that appears to have a historical or present relationship with the petitioner or that may otherwise be considered to have a potential interest in the acknowledgment determination." Please see my comments for §83.22(b)(1)(iv) above. Additionally, this office would like the process of vetting include the determination of whether "any other recognized tribe and any petitioner that appears to have a historical or present relationship with the petitioner" be defined. We request that "A historical or present relationship with the petitioner" be defined as a formal relationship, not an implied relationship. One where there is documentation attesting to formal interaction between the two tribes or petitioners actually occurred. Because this is an open invitation for these third parties to participate, the burden of proof of this formal relationship should be on the third party and an opportunity to contest the participation of the third party in this process be afforded to the petitioner. The same standard and process should be applied to third parties "that may otherwise be considered to have a potential interest in the acknowledgment determination". There are three State Recognized Cherokee Tribes in the State of Alabama. I am almost certain that at least one of the three Federally Recognized Cherokee Tribes will attempt to contest recognition of any or all of them should they petition for federal recognition. These tribes are located in Oklahoma and North Carolina and not Alabama, but will attempt to establish a "Potential interest". I am confident that recognized Creek, Choctaw, and Shawnee tribes who do not exist within the State of Alabama will do the same. These potential interests should have to be defined and presented to the petitioners and the petitioners should have the right to respond in a vetting process prior to the third party information being taken into official consideration in the petition action. The term "Appear" should also be defined and should not be related to place or people names. "Other recognized tribes and any petitioner" should not be deemed qualified to comment because of the

appearance of a common name (Cherokee, Choctaw, Creek, Shawnee, etc,). For example, everyone with the last name Johnson should not "Appear" to have a historical or present relationship with the petitioner because the petitioner is named Johnson. Throughout this document, there are numerous procedures that allow third parties to influence the process of the petitioner as "third" parties, but no established vetting processes or recourse that protects what should be the right of the petitioner to deal with its federal government on an entity to entity basis. We again strongly urge the OFA to insert in this document a statement that any third party being found to bring false information into the process will be banned from any current and all future participation as a third party in this process for this and any future petitioners.

§83.23(a)(1) At each successive review stage, there may be points at which OFA is waiting on additional information or clarification from the petitioner. Upon receipt of the additional information or clarification, OFA will return to its review of the documented petition as soon as possible. This office requests that this subsection be expanded to include a final deadline for third party submissions to be prior to the first successive review stage commencing. We recommend a vetting process as well as sufficient response time from the petitioner to all third party submissions be completed prior to the initial review stage. Once this deadline is met, the process becomes one that is conducted solely between OFA and the petitioner. This will eliminate long delays and angst caused by point-counterpoint exchanges. It will also expedite the process and allow for improved statistics in any "Application to Decision" metrics that may be recorded for performance purposes. The burden will be placed on the third party to present all of the data they desire to present up front and allow the petitioner to respond as necessary initially, hopefully making the first review stage the longest and most work extensive stage of the

process. Again, with success metrics in mind, this office recommends that the "Clock" for the first review stage not be started until after the third party deadline and petitioner response phase is completed.

§83.24 states that "Before beginning review of a documented petition, OFA will provide the petitioner with any comments on the petition received from individuals or organizations under §83.22(b) and provide the petitioner with at least 60 days to respond to such comments. OFA will not begin review until it receives the petitioner's response to the comments or the petitioner requests that OFA proceed without its response." This office recognizes the value of defining timelines and appreciates OFA's inclusion of the words "At least" 60 days to respond. I would like to recommend the phrase be amended to reflect "At least 60 federal work days to respond to comments that are cumulatively 500 pages or less, with an additional 10 days for increments of 1-100 pages in excess of the original 500 page standard. Although this may not be an issue for many petitioners, there may be massive participation for some as there appears to be no limit to the number of third parties that can respond. A well-funded, well manned entity that is opposed to a petitioner being recognized could easily amass large quantities of data (True and False) that would need to be evaluated and addressed. This is nothing new for operations by our government that do not restrict input intentionally or unintentionally. I remember watching an interview with Rep. Bob Barr (R-Ga.) where he described an incident where an interview he gave explaining monitoring operations by the NSA prompted angry Internet users to try to overwhelm the NSA monitors by flooding the system with fabricated messages in a one-day protest that previous October. Although the actions were malicious, no laws were broken and massive amounts of time was allocated to investigating those fabricated messages to determine

their level of validity. I believe this could occur in this system. If I have read past critiques on the process we are attempting to amend, the volume of data was stifling in some cases, and smaller tribes will need the extra time to respond should the third party inputs be in excess of 500 cumulative pages. As stated above, the petitioner may request that OFA proceed without its response, so this amendment would be protective and not punitive in any way to the petitioner.

§83.25 OFA will notify the petitioner and informed parties when it begins review of a documented petition and will provide the petitioner and informed parties with [§83.25(a)] The name, office address, and telephone number of the staff member with primary administrative responsibility for the petition; [§83.25(b)] The names of the researchers conducting the evaluation of the petition; and [§83.25(c)] The name of their supervisor. This office requests that the inclusion of "Informed Parties" be stricken from this provision. Based on the number of incidents of entities and lobbyists out there attempting to exert undue influence, we believe this opens the door for attempts by third parties to influence the process by contacting staff members, researchers, and/or their supervisors in a manner that is not transparent to the petitioner. It would be data cumbersome and time intensive to record all contacts made by these people should they attempt to make contact, and provide good transcripts to the petitioner for response. Without this data transfer process to the petitioner, the petitioner would be at a disadvantage and would not have the ability to address new issues brought up outside of the previously stated process in a timely manner. By allowing third parties this access, one opens the door for disruptive influences who may attempt to exercise undue influence on those working the petition. Why expose the process and government employees to potential tampering unnecessarily.

§83.29(c) "OFA must provide the petitioner with the additional material obtained in paragraph (b) of this section, and provide the petitioner with the opportunity to respond to the additional material. The additional material and any response by the petitioner will become part of the record." Recommend a realistic timeline be established as in §83.24 above and allow the petitioner a sufficient number of federal work days to review, formulate, and submit a response.

Again, thank you for the time and effort being placed on fixing this process. Should you have any questions as to this submission, please feel free to contact me.

/S/
Robert R. Russell Jr.
Executive Director
Alabama Indian Affairs Commission